



# JUSTICE ADMINISTRATION DEPARTMENT



## SUMMARY REPORT

### *U visa: A Critical Tool for Law Enforcement to Support Survivors of Crime and Build Community Resiliency*

October 12th, 2021

## I. ABOUT

On November 10, 2020, Commissioners Court approved a motion for the Justice Administration Department (JAD) to produce a model policy for law enforcement agencies to use when processing requests related to Form I-918B (U visa certification) and promoting said procedure to local law enforcement agencies. To fulfill this request, JAD wrote a report providing an overview of the U visa program, the current policies nationwide, in Texas, and locally, as well as recommendations on the federal, state, and local levels. The report also includes a model policy for certifying agencies for completing U visa certifications.

This guide provides a brief overview of the U visa program, what is happening locally, and, for brevity, local level recommendations. For a full examination of U visa policies and recommendations, refer to the full report.

The report and policy are available on the JAD website:

## II. U VISA PROGRAM

**Origins and Purpose of U visa:** The passage of the Victims of Trafficking and Violence Protection Act in 2000 established the U nonimmigrant status (U) Visa (i.e., U visa).<sup>1</sup> The Act provides an opportunity for legal status to immigrant survivors of qualifying crimes (e.g., domestic violence, felonious assault, trafficking, etc.) to encourage survivors to cooperate with law enforcement and the detection, investigation, and prosecution of these crimes. A U visa can provide a survivor of crime (or witness) legal immigration status<sup>2</sup> for up to four years while they participate in the legal proceedings.<sup>3</sup> The U visa is intended to encourage crime reporting and increase trust with law enforcement.<sup>4</sup>

**Eligibility Requirements:** There are certain eligibility requirements an individual must meet to receive a U visa. The first is for qualifying persons to receive a certification via Form I-918, Supplement B or Supp B (i.e., "law enforcement certification") from a certifying agency.<sup>5</sup> This form confirms that the applicant was a survivor of a "qualifying criminal activity" (refer to **Table 1** for the complete list) where they suffered substantial physical or mental harm as a result and that the person is helpful or is likely to be helpful in the detection, investigation, and/or prosecution of the crime. Form I-918B **ONLY** certifies that a person is a victim or witness to a qualifying criminal activity. The certification **does not guarantee a successful application for the U visa.**<sup>6</sup> Additionally, a signed I-918B does not convey any immigration status. **Only United States Citizenship and Immigration Services (USCIS) can approve or deny an applicant's U visa application.**

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<sup>1</sup> (USCIS, 2020)

<sup>2</sup> And thus a work permit.

<sup>3</sup> This allows the individual to live and work in the United States while the case goes through the justice system, and provides a path to legal residency (i.e., green card) for the survivor (Parmeter, 2015).

<sup>4</sup> Permenter, 2015; USCIS, 2020

<sup>5</sup> Congress has designated certain government agencies as certifying agencies. These agencies include persons who investigate and prosecute criminal activity, including but not limited to prosecutors, judges, and police agencies.

<sup>6</sup> Arruela et al., 2014, p. 6

Rape	Prostitution	Obstruction of Justice	Slave Trade
Torture	Sexual Exploitation	Perjury	Extortion
Peonage	Female Genital Mutilation	Human Trafficking	Manslaughter
Incest	Stalking	Involuntary Servitude	Domestic Violence
Murder	Being Held Hostage	Unlawful Criminal Restraint	Felonious Assault
Sexual Assault	Kidnapping	False Imprisonment	Fraud in Foreign Labor Contracting
Blackmail	Abduction	Abusive Sexual Contact	Witness Tampering
Other Related Crimes <sup>7</sup>			

**Table 1:** List of Qualifying Criminal Activities<sup>8</sup>

**What's happening in the United States?:** On paper, the U visa has two purposes. The first is to increase trust in the criminal justice system and to facilitate the investigation and prosecution of violent crime in the United States. The second is to protect survivors and witnesses from deportation to assist in identifying and/or prosecuting the perpetrator. In doing so, the U visa enables survivors to obtain employment authorization and provide eligibility to secure lawful permanent resident status after three years. However, the U visa program is unnecessarily complicated and likely limits the cooperation of victims and witnesses.

- **Current Acceptance Cap and Long Waiting Times:** Per 8 C.F.R. § 214.14(d)(1) (2007), USCIS can only issue 10,000 U visas per fiscal year (October to September). However, this number is insufficient for the number of legitimate applications USCIS receives per year. At the end of Fiscal Year (F.Y.) 2020, there were 270,074 applications pending USCIS action.<sup>9</sup> On average, USCIS receives five times more applications than the Agency is eligible to issue U visas.<sup>10</sup> On average, applicants wait between 5 and 10 years to receive USCIS's decision. **Figure 1** shows all the requests, approvals, denials, and pending applications for F.Y. 2018, F.Y. 2019, and F.Y. 2020.

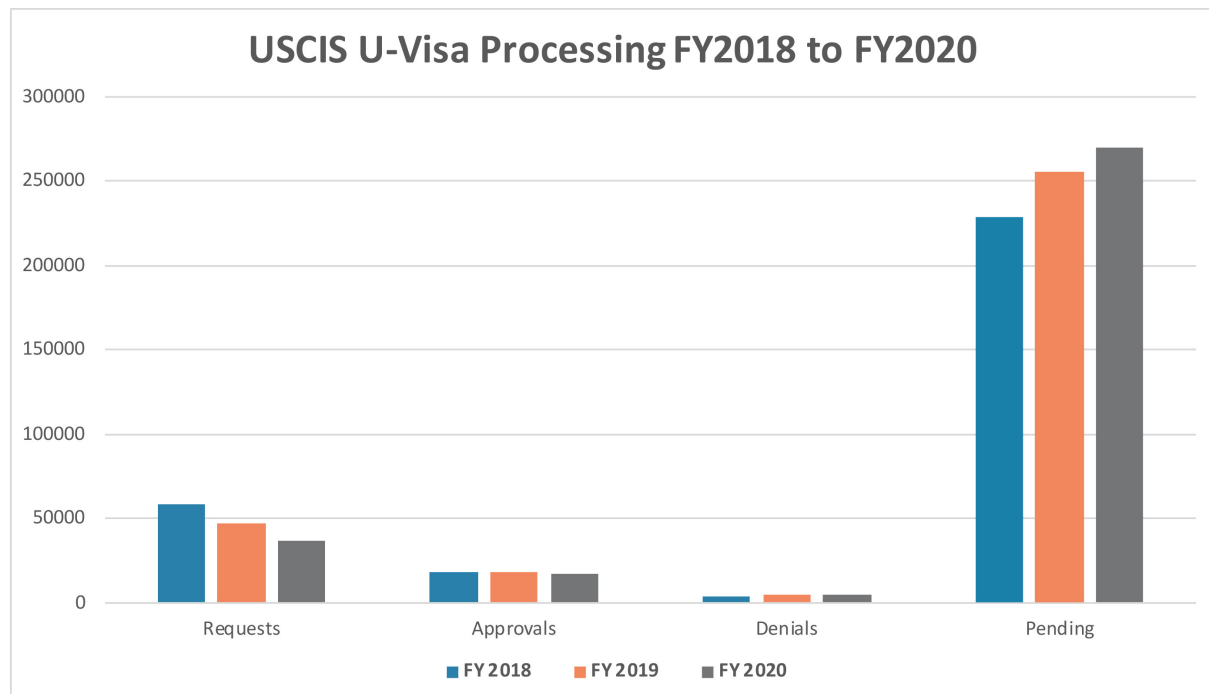
<sup>7</sup> This includes activity where the elements of the crime are substantially similar.

<sup>8</sup> These are categories of crimes and not specific crimes; various federal, state, and local statutes can fall into these general categories. These also include an attempt, conspiracy, or solicitation to commit any of the qualifying crimes and other related crimes.

<sup>9</sup> United States Customs and Immigration Services. (2021). Form I-918, Petition for U nonimmigrant Status, by Fiscal Year, Quarter, and Case Status (Fiscal Year, 2020, 4th Quarter, Jul 1-Sep 30, 2020). Retrieved from [https://www.uscis.gov/sites/default/files/document/reports/I918u\\_visastatistics\\_fy2020\\_qtr4.pdf](https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2020_qtr4.pdf)

<sup>10</sup> (USCIS, 2020; Vaughan, 2020)





**Figure 1:** U visa Processing for F.Y. 2018, F.Y. 2019, and F.Y. 2020.

**Source:** USCIS, 2021

- **Fear of Deportation:** Potential applicants may be anxious about applying due to the legitimate fear of deportation due to cooperating with law enforcement institutions. Since an applicant can wait five to ten years for a decision from USCIS, this fear is genuine because Immigrations and Customs Enforcement (ICE) can deport a person with a pending application.<sup>11</sup> While recent initiatives have been undertaken to offer work permits to those applications deemed "bona fide," there is still uncertainty around immigration policy.
- **Lack of Language Accessibility:** Another source of friction in the application process is widespread language difficulties—law enforcement has no obligation to provide documentation in any language.<sup>12</sup>
- **Lack of Uniformity:** There is no legal obligation for law enforcement to complete or sign Form I-918B on behalf of survivors or witnesses, even if they assist in the case's investigation or prosecution.<sup>13</sup> There remains a lack of uniformity in U visa certification policies across departments, even within states.<sup>14</sup> The lack of a unifying policy has created inconsistencies and disparities in the treatment of survivors of crime.

<sup>11</sup> Asad, A. L. (2020). Latinos' deportation fears by citizenship and legal status, 2007 to 2018. *Proceedings of the National Academy of Sciences*, 117(16), 8836–8844. <https://doi.org/10.1073/pnas.1915460117>; Brabeck, K. M., & Guzmán, M. R. (2009). Exploring Mexican-Origin Intimate Partner Abuse Survivors' Help-Seeking Within Their Sociocultural Contexts. *Violence and Victims*, 24(6), 817–832. <https://doi.org/10.1891/0886-6708.24.6.817>.

<sup>12</sup> Morando Lakhani 2014

<sup>13</sup> Abrue, et al., 2019; Kahmi & Lakhani, 2020

<sup>14</sup> Abrue, et al., 2019; Arruela et al., 2014

### III. U VISA PROGRAM

Harris County has experienced an increase in demand for U visas over the last four years. However, there has also been a decrease in capacity to help survivors or witnesses apply for U visas, resulting in individuals seeking help being turned away. Service providers have also seen an increased time from application to decision on U visas (e.g., the average is 7-10 years). This is remarkable considering the goal of the U visa is to enable a survivor or witness to report a crime and participate in the prosecution of a defendant. Criminal trials are likely concluded at the point USCIS approves or denies the U visa.

There is also a lack of consistency across departments and contradictions from what a specific organization says their policy is and what survivors experience. For example, the Houston Police Department (HPD) said they could make exceptions to the statute of limitation, but service providers reported that they appealed decisions and no exceptions were made.

**Current Local Challenges:** Similar to the challenges with the U visa program occurring on the federal level, there are also local-level challenges concerning certifications.

- **Statute of limitations.** Although not all agencies employed a statute of limitation for when the victimization occurred, some (e.g., HPD) did.<sup>15</sup> Victim service providers suggest that the best way to assist survivors or witnesses is to eliminate this time restriction. They stated that it is the "most harmful" and "doesn't help survivors" since it penalizes those who may have just become aware of the U visa program even though their victimization occurred outside this statute of limitation.
- **Data challenges.** There is either no data collection concerning U visa certifications or is inconsistent data collection with departments. Some agencies keep data on acceptances, denials, and referrals, but do not have pending information or detailed information on denial reasons. There should be consistent records kept on the number of requests received by each agency, acceptances, referrals, denials, and the reasons for denials (e.g., not a qualifying crime).

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<sup>15</sup> HCDAO also has a statute of limitations of five (5) years, however, they will review requests outside this time limit on a case-by-case basis and these can still be approved.

## IV. RECOMMENDATIONS

Although policies can be changed at the local and state level to be more survivor-focused and make the process easier to navigate, they will not alleviate the national challenges. However, local jurisdictions can still establish equitable best practices to make the U visa process easier for survivors and work as intended—to assist law enforcement and protect survivors. For recommendations on all levels of government, please refer to the full report. The following are recommendations to implement on the local level:

- **Adopt and Implement Model U visa Policy.** It is recommended that all certifying agencies adopt and implement the model U visa Policy contained in the full report. This policy includes several of the following recommendations (e.g., a collaboration of agencies) for completing U visa certifications.
- **Increase Collaboration and Cooperation Between Certifying Agencies and Victim Services Providers:** There should be more collaboration and cooperation between agencies and victim service providers. Agencies should work with victim services providers and vice-versa to inform policies.
- **Certifying Agencies Should Not Consider Criminal or Immigration History:** Criminal and immigration history should not be considered when completing U visa certifications since USCIS will consider the applicant's history when adjudicating the application. Certification serves as a statement that the person was a victim of a qualifying crime and was reasonably helpful in investigating or prosecuting that crime.
- **Agencies Should Include U visa Information in Victim Services Packets:** Agencies should provide U visa certification information in their victim services packet that is given to all crime victims. Information on U visa certification needs to be posted on agency websites. The contact information of those who certify and/or assist survivors needs to be readily available with phone numbers and email addresses. Besides providing information readily on agency websites, this information must be delivered in several languages. A good example is the Seattle PD website which has information in seven (7) languages for immigrants.

For additional information regarding U visa policies and the model Policy, refer to the U visa report at <https://jad.harriscountytexas.gov/>

If you need information about completing a U visa certification form or training on U visa certification, you can refer to the Law Enforcement Resource Guide at [https://www.uscis.gov/sites/default/files/document/guides/U\\_Visa\\_Law\\_Enforcement\\_Resource\\_Guide.pdf](https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf) or you can contact USCIS at 240-721-3333 or at [T\\_U\\_VAWATraining@uscis.dhs.gov](mailto:T_U_VAWATraining@uscis.dhs.gov)